

BEFORE THE

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[REDACTED]

- (c) To determine whether Mayer is now financially qualified to construct and operate the station for three months without revenue.
- (d) To determine whether the site proposed by Mayer is suitable for its intended purpose;
- (e) To determine whether Mayer misrepresented or lacked candor with the Commission in certifying to the



business philosophy illustrates a basic deficiency in MBC's argument and shows why the financial qualifications issue requested by MBC lacks credence. In short, MBC has relied solely on a hearsay showing of the cost of new equipment to support a costs estimates issue. Its attempt to extrapolate other costs from that limited showing is clearly speculative and unreliable. In light of these obvious gaps in MBC's showing, it has not made the required clear and convincing showing that Mayer's proposal could not be effectuated.<sup>3</sup> Revised Processing of Broadcast Applications,

70 F.R. 21, 222, 223-224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

II. Mayer's Site Will Readily Accommodate Her  
Proposed Tower and Associated Guy Wires

5. MBC also attacks the suitability of Maver's site. Again.

site occurs when the guying layout is rotated ninety degrees as pictured in his attached drawing,<sup>7</sup> not as pictured by Mr. Evans who proposed one set of guy wires oriented 90° True and the other two sets of guy wires oriented at 210° and 330° True. Mr. duTreil's Technical Statement illustrates the tower guying arrangement for the most efficient use of Mayer's site. Under this arrangement, Mayer's proposed tower can employ a guying distance of 305 feet, or 65.6 percent of the tower height, well within the 60 to 70 percent guy ratio range for normal costs. Thus, Mr. Evans's erroneous calculations do not employ the maximum land-use efficiency of Mayer's site. Moreover, Mr. duTreil points out that MBC's Engineering Statement errs in employing the proposed tower height of 468 feet for computing the guying ratio. Using that height the uppermost guy wires would connect to the aeronautical beacon rather than to the tower!

7. Even assuming the validity of Mr. Evans's calculations, Mr. duTreil further states that there is a wide margin of permissible tower guying ratios depending on the type and size of the tower and the load it is designed to carry and that, based on information obtained from LDI Communications, a designer and

8. Mr. duTreil also points out that by employing a cantilever section on the portion of the tower where the FM antenna is side-mounted, the uppermost guy wires would be approximately 415 feet above ground level, and with 315 feet for guying distance, a ratio of 75.9% would be obtained, well above standard guying. Moreover, use of a cantilevered section does not appreciably change the cost of a tower. Thus, there are several economically feasible options available to Mayer to erect and guy her tower within her proposed site.

9. The foregoing analysis of MBC's Engineering Statement demonstrates that its erroneous calculations do not support the site suitability issue requested by MBC. Instead, Mayer has shown that her site will accommodate her proposed tower and its guy wires without impediment or additional expense.<sup>8</sup>

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<sup>8</sup> The cases cited by MBC involved situations where questions were raised about whether the site could contain necessary guy wires in contrast to Mayer's site which MBC concedes would accept guy wires adequately. In Rocket Radio, Inc., 31 RR 2d 1696 (Rev. Bd. 1974), the Review Board added an unopposed site suitability issue where location of the antenna mast atop a building raised a question about the location of guy wires. A site suitability issue was added in A.C. Elliot, Jr., 32 RR 2d 1128 (Rev. Bd. 1975), where questions existed whether guy wires could be installed to avoid power lines and telephone cables and applicant made no showing a sufficient guy wire system could be installed. In El Camino Broadcasting Corp., 12 RR 2d 1057 (Rev. Bd. 1968), an issue was added where there was conflict between the consulting engineer's statement and his engineering diagram. Similarly in Athens Broadcasting Co., 12 RR 2d 285 (Rev. Bd. 1968), the issue raised concerned whether a guyed tower could be constructed on the site at all and whether significant renovations in existing buildings were required, questions not adequately addressed by the applicant's engineer. Dupage County Broadcasting, Inc., 9 RR 2d 860 (Rev. Bd. 1967), involved a dispute over land boundaries and the

III. There Is No Basis For A Misrepresentation  
Or Lack Of Candor Issue

10. Without one iota of factual support, MBC also requested the addition of issues against Mayer involving misrepresentation and lack of candor with respect to her financial qualifications and site certification. However, MBC's motion failed to include any allegations regarding misrepresentation or lack of candor nor did it show that Mayer's proposals cannot be effectuated. Indeed, Mayer has factually demonstrated that her proposals are valid; she thus had no motive to deceive the Commission. In consequence, because MBC could not make any showing of an intent to deceive on the part of Mayer, its request for these serious issues must be rejected. Scott & Davis Enterprises, Inc., 50 RR 2d 1251 (Rev. Bd. 1982).

IV. Conclusion

11. In sum, MBC has not presented any facts with respect to either the financial qualifications of Mayer or the suitability of her proposed transmitter site which faintly support addition of those issues. MBC's sole affidavit, the conjectural statement of Mr. Evans, presented an unsupported estimated construction cost proposal based on new equipment only from an unspecified vendor and, in addition, conceded the suitability of Mayer's site even

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<sup>8</sup>(...continued)  
as here, there is no showing that Mayer's site cannot accommodate a guyed tower and Mr. du Treil has convincingly demonstrated that, in fact, it will.

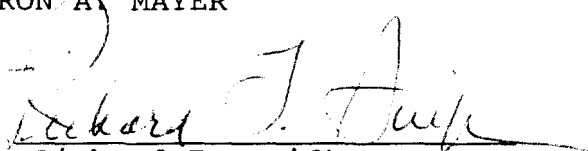


with erroneous calculations. This incomplete and contradictory showing on its face clearly fails to support addition of the requested issues even without rebuttal by Mayer. However, Mayer has amply demonstrated why MBC's requests are inherently faulty.

Wherefore, it is respectfully requested that MBC's Motion to Enlarge the Issues be denied in its entirety.<sup>9</sup>

Respectfully submitted,

SHARON A. MAYER

By:   
Richard F. Swift  
Her Attorney

TIERNEY & SWIFT  
1200 18th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(202) 293-7979

Date: March 19, 1993

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<sup>9</sup> In light of the above opposition, Mayer objects to production of all of the documents requested by MBC in its Exhibit 9 to its motion and to the depositions of Sharon Mayer, James Sadler, Robert and Gertrude Smith, Bob Hanson and other persons unnamed by MBC.

## **DECLARATION**

I, Sharon A. Mayer, hereby declare under penalty of perjury as follows:

In preparing a budget for my proposed FM station in Milford, Iowa, my goal was to put a good sounding station on the air for a reasonable cost. Milford is in a unique area known as the Iowa Lakes Region whose population swells in the summer due to tourism. A new radio station has to carve a niche in an already established radio market. Assuming this task would not be quick or easy, I thought it prudent to keep my initial costs reasonable so that the station would have every opportunity to grow and prosper.

In estimating my costs, I recognized that the cost of new electronic equipment was usually very high but that it depreciated fairly quickly. My husband is an electrical engineer and I have become familiar with the value of electronics in talking with him about equipment costs.

In arriving at my estimated costs, I researched the availability of previously used equipment as well as new equipment and talked with equipment suppliers and persons experienced in broadcasting, including other broadcasters and my counsel, in addition to researching the availability and cost of equipment in the broadcasting trade press. I found there was a supply of used equipment of good quality on the market. I therefore formulated my budget on the use of new and used equipment, which was substantially less expensive than using all new equipment. In addition, my studio will

be in a family owned building and I specifically provided in my budget for my estimated loan costs. My operating costs were based on my research efforts

Technical Statement  
Prepared on Behalf of Sharon A. Mayer  
Milford, Iowa

This statement has been prepared on behalf of Sharon A. Mayer, applicant for a new FM broadcast station to serve Milford, Iowa, File No. BPH-911004MG, in response to a "Motion to Enlarge the Issues" filed by competing applicant Milford Broadcasting Co.

I have reviewed the Engineering Statement of B. Benjamin Evans accompanying the Motion. Mr. Evans states that "Since the longer sides of the (Mayer) property run east and west, the maximum land-use efficiency would be obtained with one set of guy wires oriented 90° True . . ." That statement is in error, as maximum land use efficiency occurs when the guying layout is rotated ninety degrees.<sup>1</sup> Since this firm prepared the technical portion of Sharon Mayer's application, I am familiar with that proposal and her site. Using the same property dimensions as employed by Mr. Evans, the attached Figure shows the tower guying arrangement for the most efficient use of her site. If desirable, the tower could be moved as much as 45 feet south of the location shown on the sketch. Her proposed tower, as shown on the sketch, employs a guying distance of 305 feet, or 65.6 percent of the

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<sup>1</sup> The Engineering Statement errs in employing the proposed tower height of 468 feet for computing the guying ratio. At that height the uppermost guy wires would attach to the aeronautical beacon rather than to the tower.

tower height, well within the 60 to 70 percent guying ratio range for normal tower cost. A guying ratio from 60 to 70 percent has no substantial effect on tower cost under usual conditions.<sup>2</sup>

Contrary to Mr. Evans' statement, a tower guying ratio falling below 70 percent does not necessarily increase the cost of the tower. There is a wide margin in the permissible tower guying ratio depending on the type and size of the tower and the load it is designed to carry.

It is also possible to employ a cantilever section (the upper-most portion of the tower is free-standing) for a portion of the tower, where the FM antenna is side mounted, as in this case. Under these circumstances, the upper-most tower guy wires would be at approximately 415 feet above ground level, (about 50 feet below the tower top) and with 305 feet for guying distance, the guying ratio is 73.5 percent. Use of a cantilever section does not appreciably change the cost of a tower.<sup>3</sup>

In conclusion, my analysis confirms that erection of Sharon Mayer's proposed guyed tower is quite feasible at her proposed site and is not likely to result in unanticipated costs.

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<sup>2,3</sup> Based on information obtained from LDL Communications, Inc., designer and manufacturer of towers.

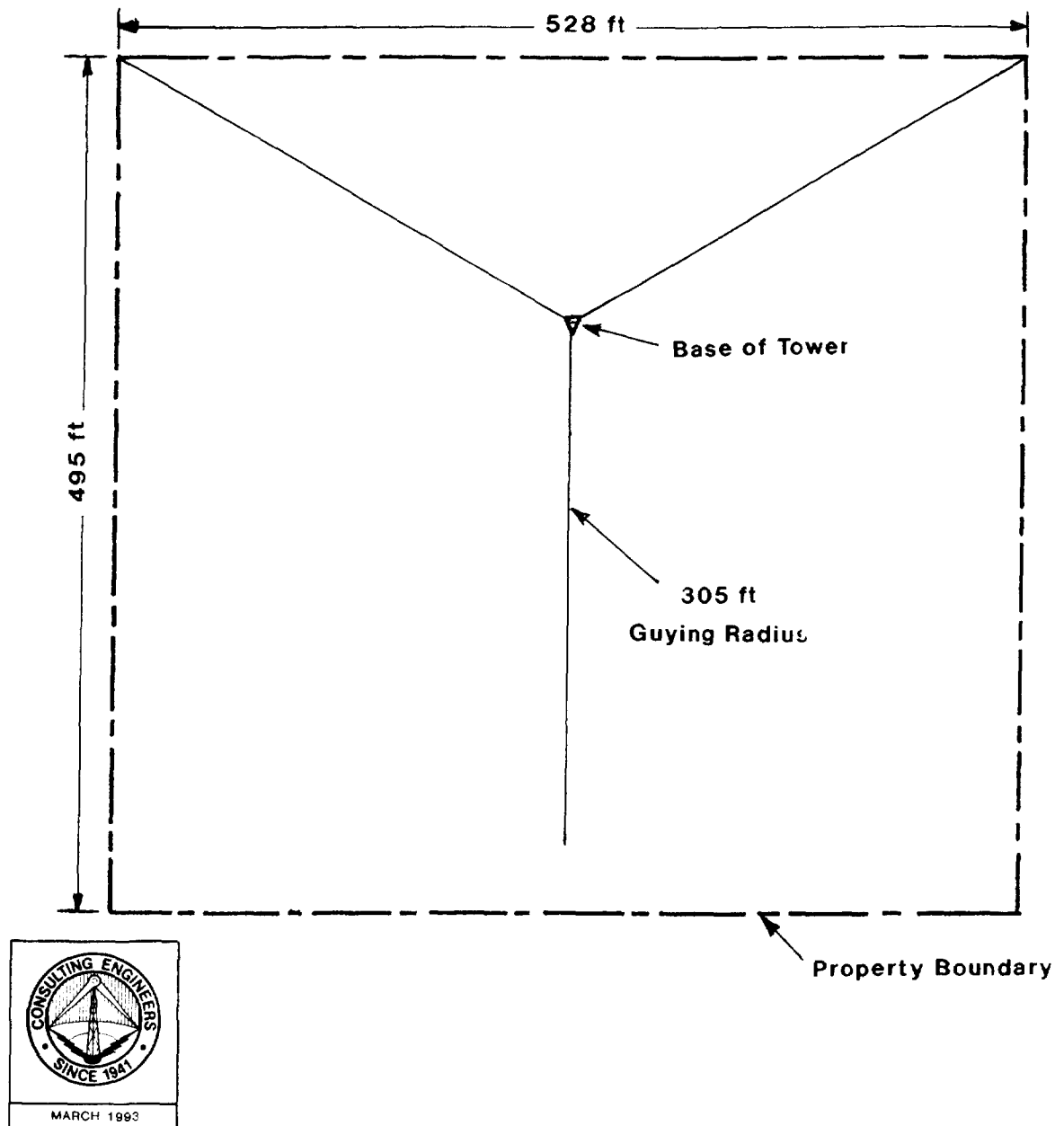
I have also reviewed the estimated construction costs for her new station as prepared by Sharon Mayer who has utilized new and previously used equipment in that estimate. I am familiar with such costs having participated in the construction of numerous broadcast stations over 30 years of professional experience. It is my belief that her construction proposal is both adequate and realistic.

I declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge and belief.

  
Louis R. du Treil

March 18, 1993

(Mr. duTreil's original signed statement will be filed as soon as it is received by counsel.)



## SKETCH OF TOWER GUYING ARRANGEMENT

SHARON A. MAYER  
MILFORD, IOWA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

QUALIFICATIONS OF  
LOUIS ROBERT DU TREIL

Mr. du Treil is a graduate electrical engineer, holding a BSEE from the University of Southwestern Louisiana, Lafayette, Louisiana.

He is a Registered Professional Engineer in the District of Columbia (No. 7048) and the State of Louisiana (No. 7977).

He has been actively engaged in consulting engineering since 1959 and prepared numerous engineering exhibits which were accepted by the Federal Communications Commission.

He is a member of the Institute of Electrical and Electronics Engineers (IEEE), member of the Society of Broadcast Engineers (SBE), member and past president of the Association of Federal Communications Consulting Engineers (AFCCE), member of the Radio Advisory Committee, and author of papers on antennas and groundwave propagation.



Louis R. du Treil  
du Treil, Lundin & Rackley, Inc.  
240 N. Washington Blvd., Suite 700  
Sarasota, Florida 34236  
(813) 366-2611

March 18, 1993



Exhibit No. 1

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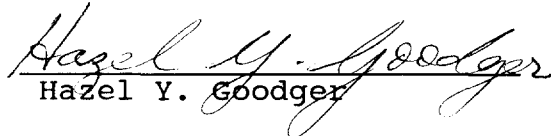
CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, Secretary in the law firm of Tierney & Swift, hereby certify that I have on this 19th day of March, 1993, sent copies of the foregoing "Opposition To Motion To Enlarge The Issues" to the following:

\*     The Honorable Edward Luton  
       Administrative Law Judge  
       Office of Administrative Law Judges  
       Federal Communications Commission  
       2000 L Street, N.W., Room 223  
       Washington, D.C. 20554

\*     Paulette Laden, Esquire  
       Hearing Branch  
       Enforcement Division  
       Mass Media Bureau  
       Federal Communications Commission  
       2025 M Street, N.W., Room 7212  
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Counsel for Milford Broadcasting Company

  
Hazel Y. Goodger

\* Hand Delivery